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In the Supreme Court of the United States

OCTOBER TERM, 1979

JULIUS T. CUYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION, ET AL., PETITIONERS

v.

JOHN ADAMS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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INTEREST OF THE UNITED STATES

This brief is filed in response to the Court's invitation. It does not appear, however, that the decision of the statutory issues presented in this case would affect the interests of the United States, since the decision of the court of appeals would not apply either to the transfer of federal prisoners to temporary state custody for trial or to the acquisition of temporary

custody of state prisoners to stand trial on federal charges (see note 4, *infra*).

QUESTION PRESENTED

Whether Article IV of the Interstate Agreement on Detainers requires that prisoners transferred from one state to another for trial on criminal charges be afforded the procedural safeguards provided by the Uniform Criminal Extradition Act.

STATEMENT

1. In May 1977, New Jersey authorities filed a detainer with Pennsylvania correctional authorities regarding respondent, who was then serving a prison sentence at a Pennsylvania state prison. In accordance with Article IV(a) of the Interstate Agreement on Detainers ("the Agreement"),[1] the New Jersey authorities requested temporary custody of respondent in order to prosecute him for armed robbery and other offenses. Respondent received a copy of this request for temporary custody, which specified the charges pending against him but did not inform him of his right to petition the Governor of Pennsylvania to disapprove the requested transfer (Pet. App. 2a-3a, 14a-15a).

Prior to being transferred to New Jersey, respondent filed suit in the United States District Court for the Eastern District of Pennsylvania on behalf of

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[1] Both New Jersey and Pennsylvania are signatories to the Agreement. See N.J. Stat. Ann. tit. 2A, §§ 159A-1 to 159A-15 (West 1971); Pa. Stat. Ann. tit. 19, §§ 1431-1438 (Purdon 1964).

himself and others similarly situated, seeking damages and declaratory and injunctive relief under 42 U.S.C. 1983. He claimed that transfer of a prisoner pursuant to Article IV of the Agreement violates the Constitution in two respects. First, he asserted that the Due Process Clause requires the sending state (here Pennsylvania) to provide a prisoner subject to transfer under the Agreement with certain procedural protections, including a pre-transfer hearing. Respondent also contended that the state officials had deprived him of equal protection of the laws by processing him under the Agreement rather than under the Uniform Criminal Extradition Act ("Extradition Act").[2]

2. On October 21, 1977, the district court dismissed respondent's complaint for failure to state a claim upon which relief could be granted (Pet. App. 14a-19a; 441 F. Supp. 556). The court initially observed that because respondent had sought damages and certification of a class action, his claim was not moot even though he had already been transferred to New Jersey for trial on the pending charges (Pet. App. 15a n.1). The court then rejected respondent's constitutional claims. Relying on *Frisbie* v. *Collins*, 342 U.S. 519 (1952), and *Meachum* v. *Fano*, 427 U.S. 215 (1976), the court held that, as a matter of due process, respondent was not entitled to a pre-transfer hearing or to notice of the opportunity to

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[2] New Jersey and Pennsylvania have adopted the Extradition Act. See N.J. Stat. Ann. tit. 2A, §§ 160-6 to 160-35 (West 1971); Pa. Stat. Ann. tit. 19, §§ 191.1-191.31 (Purdon 1964).

petition the governor to disapprove the request for temporary custody (Pet. App. 15a-17a). In addition, the court concluded that the state may constitutionally distinguish between the transfer of a lawfully incarcerated prisoner pursuant to the Agreement and the extradition of a person otherwise at large in accordance with the Extradition Act (*id.* at 17a-18a).

Without reaching respondent's constitutional claims, the court of appeals reversed. The court concluded that Article IV(d) of the Agreement preserves a prisoner's existing procedural rights under the Extradition Act (Pet. App. 7a, 13a). The court noted that an intermediate appellate court in Pennsylvania had reached a different result in similar circumstances. See *Commonwealth ex rel. Coleman* v. *Cuyler*, 396 A.2d 394 (Pa. Super. Ct. 1978). The court of appeals held, however, that the state court decision was not controlling because construction of an interstate compact such as the Agreement presents a federal question (Pet. App. 12a). The court also suggested that the *Coleman* decision had discussed only "constitutional considerations" and not the statutory question reached by the court (*id.* at 10a). The court of appeals therefore vacated the decision of the district court and "remanded for further proceedings consistent with this opinion, including consideration of the propriety of declaratory relief * * *" (Pet. App. 13a).

DISCUSSION

1. This case presents important and recurring questions concerning the relationship between the Interstate Agreement on Detainers, which has been enacted by at least 46 states, the District of Columbia, and the federal government,[3] and the Uniform Criminal Extradition Act, which has been adopted by at least 48 states. Primarily at issue is whether a prisoner who is transferred between states under the Agreement is entitled to the pretransfer procedural protections available to a person arrested and extradited under the Extradition Act. See *Michigan* v. *Doran*, 439 U.S. 282, 287 (1978); Section 10 of the Uniform Criminal Extradition Act. Although the decision of the court of appeals apparently does not affect the transfer of prisoners to and from federal custody,[4] it does have a potentially broad impact on

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[3] 18 U.S.C. App., at 1395-1398.

[4] As we understand the decision of the court of appeals, it concluded simply that Article IV(d) of the Agreement preserves a prisoner's existing procedural rights granted by other constitutional or legislative provisions, including the Extradition Act. Transfers to and from federal custody are generally not subject either to the Extradition Clause of the Constitution, Art. IV, Sec. 2, cl. 2, or the legislation such as the Extradition Act, which is designed to implement the Extradition Clause. See, *e.g.*, *United States* v. *Guy*, 456 F.2d 1157, 1160 (8th Cir.), cert. denied, 409 U.S. 896 (1972); *Derengowski* v. *United States*, 404 F.2d 778, 780 (8th Cir. 1968), cert. denied, 394 U.S. 1024 (1969); *Thomas* v. *Levi*, 422 F. Supp. 1027 (E.D. Pa. 1976). Thus, if this Court were to grant review in this case and affirm the decision below, the only impact on the federal government might arise in the context of the extradition of a prisoner from the District of Columbia to a state. See 23 D.C. Code Ann. § 704.

the procedures required to transfer prisoners between states. Because the decision of the court of appeals is in apparent conflict with decisions of other appellate courts, including state courts within the Third Circuit,[5] plenary review by this Court may be warranted.

Given the peculiar circumstances of this case, however, it may be more appropriate for the Court to remand this case to the court of appeals for consideration whether respondent's claims are now moot. Respondent's suit concerned his right to certain pretransfer procedural protections.[6] But while his complaint was pending in the district court, respondent was transferred to custody in New Jersey. See Pet. App. 15a n.1. We have been informed that subsequently respondent was convicted in the New

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[5] See, *e.g.*, *Commonwealth ex rel. Coleman* v. *Cuyler*, 396 A.2d 394 (Pa. Super. Ct. 1978); *Hystad* v. *Rhay*, 12 Wash. App. 872, 533 P.2d 409 (1975); *State* v. *Thompson*, 133 N.J. Super. 180, 336 A.2d 11 (1975); *Wertheimer* v. *State*, 294 Minn. 293, 201 N.W. 2d 383 (1972). But see *McQueen* v. *Wyrick*, 543 S.W.2d 778 (Mo. 1976); *Moen* v. *Wilson*, 189 Colo. 85, 536 P.2d 1129 (1975); *State ex rel. Garner* v. *Gray*, 55 Wis.2d 574, 201 N.W. 2d 163 (1972). See also *Atkinson* v. *Haverberry*, 589 F.2d 917 (5th Cir. 1979); *State ex rel. Bailey* v. *Shepard*, 584 F.2d 858 (8th Cir. 1978).

[6] There is also a substantial question whether respondent could challenge the fact of his interstate transfer in a federal court proceeding under 42 U.S.C. 1983 rather than in a habeas corpus action in state or federal court. See *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973). Compare *Michigan* v. *Doran*, *supra* (extradition challenged in state habeas corpus proceeding), with *Meachum* v. *Fano*, 427 U.S. 215 (1976) (intrastate transfer challenged under 42 U.S.C. 1983).

Jersey state courts, sentenced to a term of 9¾ years' imprisonment to run concurrently with his 30-year sentence in Pennsylvania, and returned to Pennsylvania's custody on March 23, 1978. It is therefore apparent that respondent's claims for injunctive and declaratory relief are moot. See, *e.g.*, *County of Los Angeles* v. *Davis*, 440 U.S. 625 (1979); see also *Pettibone* v. *Nichols*, 203 U.S. 192 (1906) (no right to habeas corpus relief for wrongful extradition); *Frisbie* v. *Collins*, 342 U.S. 519 (1952). Moreover, although respondent sought class action certification, the district court never certified an appropriate class to succeed to respondent's claims. See Pet. App. 15a n.1.[7] Finally, even if respondent's request for dam-

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[7] Since "it is only a 'properly certified' class that may succeed to the adversary position of a named representative whose claim becomes moot," *Kremens* v. *Bartley*, 431 U.S. 119, 132-133 (1977), quoting *Board of School Commissioners* v. *Jacobs*, 420 U.S. 128, 130 (1975), the failure of the district court to certify a class strongly suggests that there is no longer a live case or controversy. Nor is this a case in which certification is appropriate after the expiration of the named plaintiff's claim because the claim is "by nature temporary" and it is unlikely that an individual claim would survive "long enough for a district judge to certify the class." See *Gerstein* v. *Pugh*, 420 U.S. 103, 110 n.11 (1975). Under Article IV(a) of the Agreement, a prisoner may not be transferred for at least 30 days after the request for temporary custody is received by the sending state. Furthermore, respondent could have sought preliminary injunctive relief in this case, at least pending class certification. See generally *United States Parole Commission* v. *Geraghty*, No. 78-572. A copy of the government's brief in this case has been sent to both petitioners and respondent.

ages is not technically moot,[8] resolution of that claim seemingly depends on the determination of respondent's constitutional contentions and not a determination of whether respondent was denied a hearing guaranteed only by state statute.[9]

2. The Extradition Clause of the Constitution obligates any state to extradite a fugitive from justice of another state upon receipt of a demand from the executive of the state in which the fugitive is charged

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[8] As evidenced by his conviction in New Jersey, respondent would ultimately have been transferred to New Jersey authorities even if he had been granted a pretransfer hearing. Accordingly, respondent at most could recover nominal damages for the alleged violation of his right to procedural due process. See *Carey* v. *Piphus*, 435 U.S. 247 (1978). Moreover, even assuming that petitioners violated respondent's constitutional rights, it is clear that respondent is not even entitled to nominal damages in the circumstances of this case. At the time that the New Jersey authorities requested temporary custody of respondent, both the New Jersey and Pennsylvania courts had declared that a prisoner transferred pursuant to the agreement has no right to a pretransfer hearing. See *Commonwealth ex rel. Coleman* v. *Cuyler, supra*; *State* v. *Thompson, supra*. Because petitioners' actions comported with those decisions, there is no basis for awarding respondent damages. See *Procunier* v. *Navarette*, 434 U.S. 555 (1978).

[9] The court of appeals did not purport to construe the Agreement and the Extradition Act as a basis for awarding damages. Rather, the court "remanded for further proceedings consistent with this opinion, including consideration of the propriety of declaratory relief applicable to members of the class" (Pet. App. 13a). Indeed, it is not readily apparent how the denial of a hearing required only by state law (the Extradition Act) gives rise to a cause of action for damages cognizable under Section 1983, unless the denial is based on invidious grounds.

with a crime.[10] U.S. Const. Art. IV, Sec. 2, cl. 2. As this Court recently explained (*Michigan* v. *Doran*, *supra*, 439 U.S. at 287):

> The Extradition Clause was intended to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed * * * [and] to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus "balkanize" the administration of criminal justice among the several states.

However, the Extradition Clause, which does not set forth a particular extradition procedure, is not self executing and does not afford an accused any procedural protections. See, *e.g.*, *Drew* v. *Thaw*, 235 U.S. 432, 439 (1914); *Marbles* v. *Creecy*, 215 U.S. 63, 67-68 (1909); *Munsey* v. *Clough*, 196 U.S. 364, 372 (1905); *Roberts* v. *Reilly*, 116 U.S. 80, 94 (1885).

Accordingly, Congress and the state legislatures have from time to time enacted legislation in order to regularize and to particularize the extradition process. For example, since 1793 Congress has mandated that a state to which a fugitive has fled must arrest and extradite a fugitive upon presentation of a proper demand by the executive of the requesting state. See 18 U.S.C. 3182; *Michigan* v. *Doran*, *supra*, 439 U.S. at 287 & n.6; *Kentucky* v. *Dennison*, 65

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[10] The failure of a state executive to comply with a demand for extradition is apparently not subject to judicial review. See *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66, 107-110 (1860).

U.S. (24 How.) 66, 104-107 (1860).[11] In addition, all but two of the states have adopted the Uniform Criminal Extradition Act. In addition, both Congress and the great majority of the states have enacted the Interstate Agreement on Detainers. The interaction of these two statutes gives rise to this case.

a. The Extradition Act specifies in considerable detail the procedures to be followed in the traditional extradition process. Section 3 of the Act governs the

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[11] The demand must be accompanied by a certified indictment or affidavit charging the fugitive with a crime in the requesting state. 18 U.S.C. 3182. A fugitive arrested and extradited pursuant to Section 3182 is not entitled to a hearing before the governor or formal notice of the extradition proceedings. See, *e.g.*, *Munsey* v. *Clough*, *supra*, 196 U.S. at 372. It is well settled, however, that such a person may, prior to extradition, bring a habeas corpus action based on Section 3182 for the limited purpose of challenging

> (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.

Michigan v. *Doran*, *supra*, 439 U.S. at 289. See, *e.g.*, *Ex parte Reggel*, 114 U.S. 642, 651 (1885); *Roberts* v. *Reilly*, *supra*, 116 U.S. at 94-97; *Drew* v. *Thaw*, *supra*, 235 U.S. at 440. If there is conflicting evidence regarding the accused's identity or status as a fugitive, the court on habeas corpus may not review the executive's determination in favor of extradition. See *Munsey* v. *Clough*, *supra*, 196 U.S. at 374-375; *Pettibone* v. *Nichols*, 203 U.S. 192, 204-205 (1906).

Respondent, of course, was not transferred pursuant to Section 3182.

form and content of the executive demand.[12] The executive in the asylum state may make an independent investigation of the circumstances underlying the request for extradition (Section 4; Pet. App. 33a-34a). If the executive determines that the demand will be honored, he signs an arrest warrant conforming with Section 7 of the Act. After the accused has been arrested but before he may be turned over to the authorities of the requesting state, Section 10 of the Act provides that he must be taken before a judge in the asylum state and informed of the request for extradition, the crime of which he is accused, and his right to obtain counsel to challenge the extradition (Pet. App. 36a). Thereafter, the fugitive may bring a limited habeas corpus proceeding challenging his extradition. See note 11, *supra; Michigan* v. *Doran, supra,* 439 U.S. at 289; see also Section 20 of the Act (Pet. App. 41a).

Although the Extradition Act is designed primarily to govern the extradition of a fugitive otherwise at large in the asylum state, the Act also may be employed to bring about the extradition of a person already imprisoned in the asylum state. Thus, Section 5 of the Act provides that the executive of the requesting state "may agree with the executive au-

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[12] See Pet. App. 33a. The demand must be in writing and ordinarily must allege that the accused was in the demanding state at the time of the crime. In addition, the demand must be accompanied by an indictment (or information or affidavit made before a magistrate) that substantially charges the accused with a crime under state law and that has been authenticated by an executive authority in the demanding state.

thority of [the asylum] state for the extradition of [a prisoner] before the conclusion of [pending criminal] proceedings or his term of sentence in such other state, upon condition that such person be returned to [the asylum] state at the expense of [the requesting] State as soon as the prosecution in [the requesting] State is terminated" (Pet. App. 34a).[13] Section 19 of the Act makes clear, however, that regardless of the demand, the executive in the asylum state has discretion to keep custody of a prisoner until he has been tried, convicted, and discharged from prison.

b. In contrast to the Extradition Act, the Interstate Agreement on Detainers applies only to persons already imprisoned in another state. See Article I. The Agreement "prescribes procedures by which a member State [including the federal government] may obtain for trial a prisoner incarcerated in another member jurisdiction and by which the prisoner may demand the speedy disposition of certain charges pending against him in another jurisdiction." *United States* v. *Mauro*, 436 U.S. 340, 343 (1978). The Agreement is applicable whenever a member ("receiving") state has filed a detainer regarding a prisoner in another member ("sending") state. See *id.* at 343.[14] If a detainer is filed, the state au-

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[13] It is not apparent whether an executive agreement to transfer a prisoner pursuant to Section 5 also entails the other procedures set forth in the Extradition Act.

[14] "The Agreement itself contains no definition of the word 'detainer.' The House and Senate Reports [accompanying Congress' adoption of the Agreement], however, explain that '[a] detainer is a notification filed with the institution in

thorities having custody of the prisoner must inform the prisoner of the source and contents of the detainer and also of his rights under Article III of the Agreement. See Article III(c).

Article III confers upon a prisoner against whom a detainer has been lodged the right to demand that the prosecuting authorities in the receiving state bring him to trial within 180 days of his written request. Article III(a). Such a written request constitutes a request for final disposition of all untried charges underlying detainers filed by the receiving state. Article III(d). The request is also deemed to waive any extradition proceedings as to all untried charges and as to any sentence that is thereafter imposed on the prisoner in the receiving state and that must be served following completion of his sentence in the sending state. Article III(e). Failure of the authorities to commence trial within the 180-day period, unless excused for good cause, results in the dismissal of all untried charges. Articles III(a), V(c).[15]

Article IV of the Agreement authorizes a prosecutor in the receiving state who has lodged a detainer against a prisoner in the sending state to secure the prisoner's presence for trial on pending charges. See *United States* v. *Mauro*, *supra*, 436 U.S. at 351-352. The prosecutor must present to the appropriate au-

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which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction.' H.R. Rep. No. 91-1018, p. 2 (1970); S. Rep. No. 91-1356, p. 2 (1970)." *United States* v. *Mauro*, *supra*, 436 U.S. at 359.

[15] The Agreement is reprinted at Pet. App. 20a-31a.

thorities in the sending state a written request for temporary custody that has been "duly approved, recorded, and transmitted" by the trial court in the receiving state. See Article IV(a). In addition, Article IV(a) establishes a mandatory 30-day waiting period following the request for temporary custody, during which "the Governor of the sending State may disapprove the request * * *, either upon his own motion or upon motion of the prisoner." If the prisoner is transferred to the custody of the receiving state, the receiving state must try him before returning him to the custody of the sending state and, unless good cause for delay is shown, the trial must commence within 120 days of the prisoner's arrival in the receiving state. Article IV(e), (c).

c. Relying primarily on Article IV(d) of the Agreement,[16] the court of appeals concluded that the Agreement preserves the prisoner's existing rights under the Extradition Act (Pet. App. 7a). But Article IV(d) states only that the Agreement does not deprive a "prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof * * *." Nothing in the Agreement suggests that "any right" includes the proce-

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[16] Article IV(d) of the Agreement provides:

> Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

dures of the Extradition Act.[17] Rather, the only right "to contest the legality of [a prisoner's] delivery" expressly contained in the Agreement is the prisoner's right under Article IV(a) to petition the governor to disapprove the prosecutor's request for temporary custody during the 30-day waiting period. See, *e.g.*, *Atkinson* v. *Hanberry*, 589 F.2d 917, 919 (5th Cir. 1979); *Wertheimer* v. *State*, 294 Minn. 293,

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[17] The court of appeals indicated that Article III(e) supports its view. That provision simply establishes, however, that a prisoner who requests immediate disposition of the charges underlying the detainer thereby waives his right to petition the governor or otherwise object to his transfer. See note 18, *infra*. Equally important, Article III(e) ensures that a prisoner who requests final disposition under Article III(a) and who is thereafter convicted and sentenced in the receiving state may be summarily transferred back to the receiving state after he serves his sentence in the sending state. See Council of State Governments, *The Handbook on Interstate Crime Control* 115 (rev. ed. 1966).

The court of appeals' reliance on the explanatory note of the Council of State Governments is, in our view, similarly misplaced. Like the Agreement, those comments specifically identify only the prisoner's right to petition the governor of the sending state as a right preserved by Article IV(d). See Council of State Governments, *Suggested State Legislation, Program for 1957*, 78-79 (1956). We further note that the handbook prepared by the Council of State Governments concerning implementation of the Agreement nowhere suggests that a prisoner transferred under the Agreement is entitled to the formal extradition proceedings embodied in the Extradition Act. To the contrary, this guide discusses only the prisoner's right to request the executive of the sending state to disapprove his transfer. See *The Handbook on Interstate Crime*, *supra*, at 91-116. See also H.R. Rep. 91-1018, 91st Cong., 2d Sess. 3 (1970).

295, 201 N.W. 2d 383, 385 (1972).[18] Thus, a prisoner subject to transfer pursuant to the Agreement is entitled to all the detailed procedures of the Extradition Act only if, as a matter of state law, the Extradition Act covers all interstate transfers, including those of prisoners. Of course, in *Commonwealth ex rel. Coleman* v. *Cuyler, supra,* 396 A.2d at 399-400, the Superior Court of Pennsylvania squarely rejected this construction of the Extradition Act,[19] and

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[18] In addition, a prisoner transferred under the Agreement may have the right to a habeas corpus hearing prior to transfer for the very limited purpose of challenging the states' failure to comply with the Agreement. See *Commonwealth ex rel. Coleman* v. *Cuyler, supra,* 396 A.2d at 397; *Wertheimer* v. *State, supra,* 294 Minn. at 298-299, 201 N.W.2d at 386; *Atkinson* v. *Hanberry, supra,* 589 F.2d at 920 n.6. For example, a prisoner might be able to bring a pretransfer habeas corpus proceeding regarding the failure of the receiving state to file a proper detainer or a proper request for temporary custody. In such a proceeding, the question whether the prisoner is technically a fugitive from justice—a question subject to judicial review in the habeas corpus proceeding held in conjunction with the traditional extradition process (see note 11, *supra*)—would not be an issue, since the Agreement, unlike the Extradition Act and Section 3182, applies to all prisoners whether or not they are fugitives from justice. Compare Articles I, III(a), and IV(a) with Section 2 of the Extradition Act; 18 U.S.C. 3182.

[19] Accord, *Wallace* v. *Hewitt,* 428 F. Supp. 39, 40 n.3 (M.D. Pa. 1976) (construing Pennsylvania law). Various other courts have also viewed the two statutes as operating independently of one another. See, *e.g., State ex rel. Bailey* v. *Shepard, supra; Wertheimer* v. *State, supra; Hystad* v. *Rhay, supra; State* v. *Thompson, supra; Moen* v. *Wilson, supra; State ex rel. Garner* v. *Gray.* But see *McQueen* v. *Wyrick, supra.* Some of these courts have nonetheless concluded that the Constitution requires the state to provide a prisoner

the court of appeals should have deferred to that state law decision. See, *e.g.*, *West* v. *A.T.&T. Co.*, 311 U.S. 223, 237 (1940).

Moreover, there are compelling indications apart from the *Coleman* decision that the court of appeals erred. As this Court recognized in *United States* v. *Mauro*, *supra*, 436 U.S. at 355-356 n.23, the Agreement was designed to replace the cumbersome methods of formal extradition and special executive contracts that had previously been the only means of transferring prisoners between states. The court of appeals' construction defeats this objective. Furthermore, although formal extradition proceedings provide significant and needed protections when a person at large is arrested by one state at the behest of another, the transfer of a prisoner from one jurisdiction to another need not be accompanied by such elaborate procedures in light of the significantly di-

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transferred under the Agreement with the procedures established by the Extradition Act. See *State ex rel. Garner* v. *Gray*, *supra* (due process and equal protection); *Moen* v. *Wilson*, *supra* (due process). We submit, however, that because the Agreement covers prisoners only, whereas the Extradition Act primarily governs the arrest and extradition of otherwise free persons, there is plainly a rational basis for the different procedures set forth in the two statutes. See, *e.g.*, *Wertheimer* v. *State*, *supra*; *State* v. *Thompson*, *supra*; *Coleman*, *supra*. Furthermore, the procedures contemplated by the Agreement certainly satisfy whatever process, if any, is due a prisoner transferred from the custody of one sovereign to another. *Ponzi* v. *Fessenden*, 258 U.S. 254, 260 (1922); *Atkinson* v. *Hanberry*, *supra*, 589 F.2d at 919-920. See, *e.g.*, *Meachum* v. *Fano*, 427 U.S. 215 (1976); *Montanye* v. *Haymes*, 427 U.S. 236 (1976); cf. *Frisbie* v. *Collins*, 342 U.S. 519 (1952).

minished liberty interests that are at stake. See *Ponzi* v. *Fessenden*, 258 U.S. 254, 260 (1922).[20] In sum, the decision of the court of appeals needlessly defeats the purpose of the Agreement to "provid[e] States with a simple and efficient means of obtaining prisoners from other States." *United States* v. *Mauro, supra*, 436 U.S. at 356 n.23.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative the Court may wish to vacate the judgment of the court of appeals and remand the case for consideration of mootness.

Respectfully submitted.

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[20] A prisoner "may not complain if one sovereignty waives its strict right to exclusive custody of him for vindication of its laws in order that the other [sovereignty whose laws he has offended] may also subject him to conviction of crime against it. * * * Such a waiver is a matter that addresses itself solely to the discretion of the sovereignty making it and of its representatives with power to grant it." *Ponzi* v. *Fessenden, supra*, 258 U.S. at 260.

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